

Kansas Department of Agriculture
Division of Water Resources
PERMIT OF NEW APPLICATION WORKSHEET

1. File Number: <p style="text-align: center; font-size: 1.2em;">50,529</p>	2. Status Change Date: <p style="text-align: center; font-size: 1.2em; color: purple;">4/12/2022</p>	3. Field Office: <p style="text-align: center; font-size: 1.2em;">02</p>	4. GMD: <p style="text-align: center; font-size: 1.2em;">05</p>
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5. Status: Approved Denied by DWR/GMD Dismiss by Request/Failure to Return

6. Enclosures: Check Valve N of C Form Water Tube Driller Copy Meter

7a. Applicant(s) Person ID **67733**
New to system Add Seq# _____

**HIDDEN MARSH
ATTN: TOM POWELL
1069 MAIL SAIL CT
AWENDAW, SC 28429**

68068

7b. Landowner(s) Person ID _____
New to system Add Seq# _____

**HIXSON LUMBER SALES
ROBERT HIXSON
PO BOX 2135
LAKE DALLAS TX 75065**

NEW

7c. Landowner(s) Person ID _____
New to system Add Seq# _____

7d. Landowner Person ID _____
New to system Add Seq# _____

~~<-- OWNERSHIP CHANGE~~

8. WUR Correspondent Person ID _____
New to system Add Seq# _____
Overlap File (s) WUC Notarized WUC Form
Agree Yes No

~~7b~~
7a

9. Use of Water: Changing? Yes No

Groundwater Surface Water

IRR REC DEW MUN

STK SED DOM CON

HYD DRG WTR PWR ART RECHRG

IND SIC: _____ OTHER: _____

10. Completion Date: ~~12/31/2022~~ ²³ 11. Perfection Date: ~~12/31/2026~~ ²⁷ 12. Exp Date: _____

13. Conservation Plan Required? Yes No Date Required: _____ Date Approved: _____ Date to Comply: _____

14. Water Level Measuring Device? Yes No Date to Comply: _____ Date WLMD Installed: _____

Date Prepared: **11/23/21** By: **JNE**
Date Entered: 4/18/2022 By: **LMoody**

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: File

DATE: October 25, 2021

FROM: Jessica Engelbrecht

RE: Application, File No. 50,529

SE Tom Powell has filed the referenced new application to appropriate 100.1 acre-feet of surface water storage at a rate not to exceed natural flows of the North Fork Ninnescah River for recreational use. The application is designed to cover the indirect use of water (evaporation) from an existing reservoir located in the ~~Southwest~~ Quarter of Section 5, in Township 25 South, Range 11 West, in Stafford County, Kansas. The point of diversion represents the point at which the center of the dam intersections the stream. The related structures permit is WSN DSF-0004. DWR-Structures noted that the existing structures was determined non-jurisdictional by dam safety in 2020.

The requested quantity of 100.1 acre-feet appears to be reasonable for indirect use, based on the following information. The reservoir surface area at normal pool storage elevation is estimated at 13.3 acres, and the potential net evaporation in inches, based on K.A.R. 5-6-3, is 32 inches; therefore, the natural evaporation can be estimated as follows: 13.3 acres x 32 inches of evaporation / 12 inches = 35.6 acre-feet. Yearly Use (Storage + Evap.) 35.6 acre-feet + 64.5 acre-feet = 100.1 acre-feet.

Nearby letters were sent out on August 5, 2021 to four landowners within a half mile upstream and a half mile downstream of the point of diversion. Three neighboring landowners called with questions and, after some discussion, had no concerns.

The point of diversion is located within Big Bend Groundwater Management District No. 5, which is fully appropriated based on sustainable yield criteria, and is closed to further new surface water and groundwater appropriations per K.A.R. 5-25-4. In a October 21, 2021 letter from GMD 5, recommended that the application be approved with a waiver of K.A.R. 5-25-4. This waiver would only be considered for existing reservoirs established prior to District closure.

Jeff Lanterman, Water Commissioner, Stafford Field Office, recommended approval of the application in an email received on November 22, 2021. Based upon the above discussion, GMD 5 has recommended approval with a waiver of their regulation, approval of the application will bring the existing reservoir into compliance with water appropriation regulations, the structure is permitted by the DWR structures program, and there is no indication that the proposed beneficial use of water will impair existing water rights, it is recommended that the referenced application be approved.

Land now owned by Bob Hixson - sold by Tom Powell during application review*

1/25/2022
KJN

Engelbrecht, Jessica [KDA]

From: Conant, Cameron [KDA]
Sent: Monday, August 9, 2021 11:55 AM
To: Engelbrecht, Jessica [KDA]
Subject: App No. 50529

Follow Up Flag: Follow up
Flag Status: Flagged

Tom Powell has sold the property to Bob Hixson (Hixxson). Bob will contact the office to get squared away.

We need a copy of the title/deed showing Bob, or whatever entity, as new owner. I don't think this is too big of a deal, just odd timing with where we are with the application.

If I talk to him I plan to explain what the application is authorizing him to do (capture surface water with the existing dam on the Ninnescah, nothing more than that) and that if he does anything at all else on the property to capture or divert water, he needs to talk to DWR, NRCS, and possibly the CORPS of Engineers, so it makes sense to be happy with the current structure if we can get it finished and permitted!

Also, I'll explain where this app is in process at this time and that GMD will need to do a review recommendation. If he calls while I'm gone, feel free to talk to him or take a message. Good either way.

Cameron

From: Snodgrass, Chelsi [KDA] <Chelsi.Snodgrass@ks.gov>
Sent: Monday, August 9, 2021 11:15 AM
To: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject:

Tom Powell called his number is 864 680 8087

Chelsi Snodgrass, Administrative Assistant
Kansas Department of Agriculture
Division of Water Resources
Stafford Field Office
(620) 234-5311

Entered in Transfer Record
in my office this 9th day of
August A.D. 2021
Nita Q. Keenan
Stafford County Clerk

Lu Ann Brister, Register of Deeds
Stafford County, KS
Book: 285 Page: 22
Receipt #: 31780 Total Fees: \$55.00
Pages Recorded: 3
Date Recorded: 8/9/2021 1:02:48 PM

STATUTORY WARRANTY DEED

Grantor: **Hidden Marsh, LLC**, a Kansas limited liability company

Convey and Warrant to **Hixson Lumber Sales, Inc.**, an Arkansas corporation

The following described premises, to-wit:

SEE ATTACHED EXHIBIT A

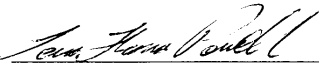
For the sum of One Dollar and other good and valuable consideration.

Subject to: easements and restrictions of record, if any

Dated this August 2, 2021

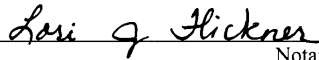
Hidden Marsh LLC, a Kansas limited liability company

By: Leon Thomas Powell Trust dated February 14, 2005, Managing Member

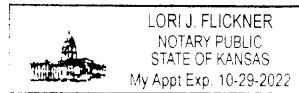
By: 
Leon Thomas Powell, Trustee

State of Kansas, Kingman County) ss.

This instrument was acknowledged before me on August 2, 2021 by **Leon Thomas Powell** as Trustee of the Leon Thomas Powell Trust dated February 14, 2005, Managing Member of Hidden Marsh, LLC, for and on behalf of said company.


Notary Public

My appointment expires: 10-29-2022



File No.: 2459014g

EXHIBIT A

The Land is described as follows:

Tract 1:

The Southeast Quarter (SE/4) of Section Five (5), Township Twenty-five (25), Range Eleven (11), Stafford County, Kansas, less a tract described as Commencing at the Southwest corner of said Southeast Quarter; thence East along the South line of said Southeast Quarter 30.00 feet for the point of beginning; thence with a deflection angle 90°00'00" left-North 205.00 feet; thence with a deflection angle 83°58'00" right-Easterly 472.57 feet; thence with a deflection angle 36°54'50" left-Northeast 851.08 feet; thence with a deflection angle 134°51'50" right-South 835.00 feet to the South line of said Southeast Quarter, thence with a deflection angle 88°04'59" right-West along the South line of said Southeast Quarter 1065.00 feet to the point of beginning.

Tract 2:

A portion of the Southeast Quarter (SE/4) of Section Five (5), Township Twenty-five (25), Range Eleven (11) West, of the 6th Principal Meridian, Stafford County, Kansas, described as follows:

Commencing at the Southwest corner of said Southeast Quarter; thence East along the South line of said Southeast Quarter 30.00 feet for the point of beginning; thence with a deflection angle 90°00'00" left-North 205.00 feet; thence with a deflection angle 83°58'00" right-Easterly 472.57 feet; thence with a deflection angle 36°54'50" left-Northeast 851.08 feet; thence with a deflection angle 134°51'50" right-South 835.00 feet to the South line of said Southeast Quarter, thence with a deflection angle 88°04'59" right-West along the South line of said Southeast Quarter 1065.00 feet to the point of beginning, subject to road right-of-way easement across the South 30.00 feet thereof and any other easements of records, TOGETHER WITH AND SUBJECT TO an ingress-egress and utility easement across the East 25.00 feet thereof.

Engelbrecht, Jessica [KDA]

From: Lanterman, Jeff [KDA]
Sent: Monday, November 22, 2021 3:14 PM
To: Engelbrecht, Jessica [KDA]
Subject: RE: 50529 Memo

Follow Up Flag: Follow up
Flag Status: Flagged

Ya. This one is a slam dunk. Just approving a old lake that has been there forever.

I recommend approval.

Thanks
Jeff

From: Engelbrecht, Jessica [KDA] <Jessica.Engelbrecht@ks.gov>
Sent: Monday, November 22, 2021 2:07 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: 50529 Memo
Importance: High

Jeff,
I don't see a reply in my email for this one. Did you ever get a chance to look it over?

Thanks,
Jessica

From: Engelbrecht, Jessica [KDA]
Sent: Monday, October 25, 2021 2:10 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: 50529 Memo
Importance: High

The memo for 50,529 is attached as well as a GMD 5 recommendation.
This is for the Allen Pond Application.

Jessica Engelbrecht, Environmental Scientist
KDA Division of Water Resources
Stafford Field Office
(620) 234-5311 Office
(620) 234-6900 Fax
Jessica.engelbrecht@ks.gov
www.agriculture.ks.gov



THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Earl D. Lewis Jr., Chief Engineer

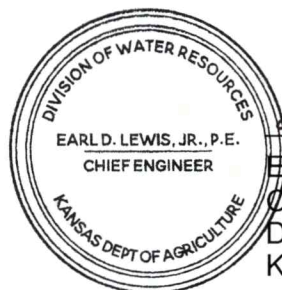
WAIVER OF REGULATION K.A.R. 5-25-4

Date: *April 12, 2022*

RE: Appropriation of Water, File No. 50,529

1. That K.A.R. 5-25-4(a) states that the entire district shall be closed to further new surface water and groundwater appropriations.
2. That the above referenced application is requesting 33.33 acre-feet of water for natural evaporation from seven (7) groundwater pits.
3. That the groundwater pits have been in existence prior to the 1960s and have not impaired any nearby water rights or domestic users.
4. That the Board recommended a waiver of K.A.R. 5-25-4(a) and approval of Application File No. 50,529.
5. That Application, File No. 50,529 should be approved with a waiver of K.A.R. 5-25-4.
6. That a waiver of 5-25-4 will not prejudicially nor unreasonably affect the public interest, and it will not impair an existing water right.

Comments:



Earl D. Lewis Jr.

Earl D. Lewis Jr., P.E.
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

Kansas Department of Agriculture
 Division of Water Resources
WAIVER REQUEST & WAIVER RULE WORKSHEET

File Number: 50,529

FO: 2

GMD: 5

WAIVER REQUEST:

UMW	Date Requested	Rule ID	Applies	Rule Type	Rule Subtype
REC	3/24/22	5-25-4	Statewide	Sustainable Yield	Closure of District
Rule Number	Date Granted	Date Denied	Justification:	The groundwater pits have existed prior to the 1960s. GMD5 recommends the waiver.	
K.A.R. 5-25-4					

WAIVER RULE (complete only if a new rule needs to be created):

Rule ID	Applicability	Type	Subtype	Rule Number	Date Active	Date Inactive
				K.A.R.		

Date Prepared 3/24/22 By JNE

Date Entered _____ By _____

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Earl D. Lewis Jr., Chief Engineer

APPROVAL OF APPLICATION and PERMIT TO PROCEED

(This is not a Certificate of Appropriation)

This is to certify that I have examined Application **File No. 50,529** of the applicant

**HIDDEN MARSH
ATTN: TOM POWELL
1069 MAIL SAIL CT
AWENDAW, SC 28429**

for a permit to appropriate water for beneficial use, together with the maps, plans and other submitted data, and that the application is hereby approved and the applicant is hereby authorized, subject to vested rights and prior appropriations, to proceed with the construction of the proposed diversion works (except those dams and stream obstructions regulated by K.S.A. 82a-301 through 305a, as amended), and to proceed with all steps necessary for the application of the water to the approved and proposed beneficial use and otherwise perfect the proposed appropriation subject to the following terms, conditions and limitations:

1. That the priority date assigned to such application is **March 1, 2021**.
2. That the water sought to be appropriated shall be used for recreational use in a pond located in the Southeast Quarter (SE $\frac{1}{4}$) of Section 5, Township 25, Range 11 West, Stafford County, Kansas, located as shown on the map accompanying the application.
3. That the appropriation sought shall be limited to all natural flows of the North Fork Ninnescah River, not needed to satisfy all vested rights and prior appropriation rights to be stored to a maximum extent of **100.1 acre-feet** per calendar year, in a reservoir created by a dam located in the Southwest Quarter of the Northeast Quarter of the Southeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 5, more particularly described as being near a point 1,669 feet North and 1,311 feet West of the Southeast corner of said section, in Township 25, Range 11 West, Stafford County, Kansas, located substantially as shown on the topographic map accompanying the application.
4. That the structure creating the above referenced reservoir was assigned Division of Water Resources Structures Permit No. WSN DSF-0004.
5. That installation of works for diversion of water shall be completed on or before **December 31, 2023** or within any authorized extension thereof. The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee, which is currently \$400.00, when construction of the works has been completed. Failure to timely submit the notice and the fee will result in revocation of the permit. Any request for an extension of time shall be submitted prior to the expiration of the deadline and shall be accompanied by the required statutory fee, which is currently \$100.00.
6. That the proposed appropriation shall be perfected by the actual application of water to the proposed beneficial use on or before **December 31, 2027** or any authorized extension thereof. Any request for an extension of time shall be submitted prior to the expiration of the deadline and shall be accompanied by the required statutory fee, which is currently \$100.00.

7. That the applicant shall not be deemed to have acquired a water appropriation for a quantity in excess of the amount approved herein nor in excess of the amount found by the Chief Engineer to have been actually used for the approved purpose during one calendar year subsequent to approval of the application and within the time specified for perfection or any authorized extension thereof.

8. That the use of water herein authorized shall not be made so as to impair any use under existing water rights nor prejudicially and unreasonably affect the public interest.

9. That the right of the appropriator shall relate to a specific quantity of water and such right must allow for a reasonable raising or lowering of the static water level and for the reasonable increase or decrease of the streamflow at the appropriator's point of diversion.

10. That this permit does not constitute authority under K.S.A. 82a-301 through 305a to construct any dam or other obstruction; nor does it grant any right-of-way, or authorize entry upon or injury to, public or private property.

11. That the applicant shall maintain accurate and complete records from which the quantity of water diverted during each calendar year may be readily determined and the applicant shall file an annual water use report with the Chief Engineer by March 1 following the end of each calendar year. Failure to file the annual water use report by the due date shall cause the applicant to be subject to a civil penalty.

12. That no water user shall engage in nor allow the waste of any water diverted under the authority of this permit.

13. That failure without cause to comply with provisions of the permit and its terms, conditions and limitations will result in the forfeiture of the priority date, revocation of the permit and dismissal of the application.

14. That the right to appropriate water under authority of this permit is subject to any minimum desirable streamflow requirements identified and established pursuant to K.S.A. 82a-703c for the source of supply to which this water right applies.

Ordered this 13th day of April, 2022, in Manhattan, Riley County, Kansas.

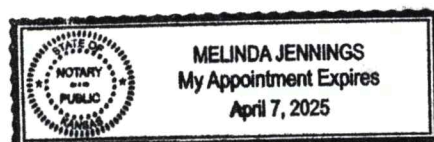
Lane P. Letourneau

Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 12 day of April, 2022, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Melinda Jennings
Notary Public



RIGHT TO A HEARING AND TO ADMINISTRATIVE REVIEW

If you are aggrieved by this Order, then pursuant to K.S.A. 82a-1901, you may:

- 1) request an evidentiary hearing before the Chief Engineer, or
- 2) request administrative review by the Secretary of Agriculture.

Failure to request an evidentiary hearing before the Chief Engineer does not preclude your right to administrative review by the Secretary.

To obtain an evidentiary hearing before the Chief Engineer, a written request for hearing must be filed within 15 days after service of this Order as provided in K.S.A. 77-531 (**i.e., within a total of 18 days after this Order was mailed to you**), with: Kansas Department of Agriculture, Attn: Legal Section, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX (785) 564-6777.

If you do not file a request for an evidentiary hearing before the Chief Engineer, you may petition for administrative review of the Order by the Secretary of Agriculture. A petition for review shall be in writing and state the basis for requesting administrative review. The request for hearing may be denied if the request fails to clearly establish factual or legal issues for review. See K.S.A. 77-527. The petition must be filed within 30 days after service of this Order as provided in K.S.A. 77-531 (**i.e., within a total of 33 days after this Order was mailed to you**), and be filed with: Secretary of Agriculture, Attn: Legal Division, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX (785) 564-6777.

If neither a request for an evidentiary hearing nor a petition for administrative review is filed as set forth above, then this Order shall be effective and become a final agency action as defined in K.S.A. 77-607(b). Failure to timely request either an evidentiary hearing or administrative review may preclude further judicial review under the Kansas Judicial Review Act.

CERTIFICATE OF SERVICE

On this _____ day of _____, 2022, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,529, dated _____ was mailed postage prepaid, first class, US mail to the following:

HIDDEN MARSH LLC
Attn: TOM POWELL
1069 MAIL SAIL CT
AWENDAW, SC 28429

With photocopies to:

HIXSON LUMBER SALES
ROBERT HIXSON
PO BOX 2135
LAKE DALLAS TX 75065

Stafford Field Office

Big Bend GMD No. 5

Division of Water Resources

1320 Research Park Drive
Manhattan, KS 66502
785-564-6700
www. agriculture.ks.gov



900 SW Jackson, Room 456
Topeka, KS 66612
785-296-3556

Mike Beam, Secretary

Laura Kelly, Governor

HIDDEN MARSH LLC
Attn: TOM POWELL
1069 MAIL SAIL CT
AWENDAW, SC 28429

April 20, 2022

RE: Application, File No. 50,529

Dear Sir or Madam:

Enclosed is a permit authorizing you to proceed with construction of the proposed diversion works and to appropriate water for beneficial use as set forth in the permit. Your attention is directed to the enclosures and to the terms, conditions, limitations, and requirements specified in this permit.

Notice must be filed on the enclosed form once the diversion works have been completed. Failure to complete the diversion works within the time allowed, or within any authorized extension of time thereof, will result in dismissal of this permit. If you need an extension of time, you must request it before the deadline for completion set forth in the permit. Any request for an extension of time must be accompanied by the statutorily required fee, which is currently \$100.00.

An annual water use report must be filed with the Chief Engineer by March 1, following the end of each calendar year. If a complete annual water use report is not received by the deadline, then a fine may be assessed and all water use under such permit or right may be suspended. Reports submitted in paper form will be assessed a \$20 per file number paper filing fee. In order to avoid this filing fee, you may submit your report online at www.kswaterusereport.org.

The approval of your application constitutes a permit to appropriate water. It does not give authority to construct any dam or other stream obstruction regulated by K.S.A. 82a-301 through 305a. It does not give authority to access any right-of-way or authorize trespassing upon or injury to public or private property. It may also be necessary for you to comply with other local, state or federal requirements.

Enclosed is an informational sheet that sets forth the procedure to obtain a Certificate of Appropriation which will establish the extent of your perfected water right. Additional information and applicable forms may be found on our website at agriculture.ks.gov/divisions-programs/dwr. If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640 or your local Stafford Field Office at 620-234-5311. If you call, please reference the file number so we can help you more efficiently.

Kristen A. Baum
New Applications and Changes Supervisor
Division of Water Resources

Enclosures

pc: Stafford Field Office
Big Bend GMD No. 5
Hixson Lumber Sales

RIGHT TO A HEARING AND TO ADMINISTRATIVE REVIEW

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CERTIFICATE OF SERVICE

On this 20 day of April, 2022, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,529, dated 12 April, 2022 was mailed postage prepaid, first class, US mail to the following:


HIDDEN MARSH LLC
Attn: TOM POWELL
1069 MAIL SAIL CT
AWENDAW, SC 28429

With photocopies to:

HIXSON LUMBER SALES
ROBERT HIXSON
PO BOX 2135
LAKE DALLAS TX 75065

Stafford Field Office

Big Bend GMD No. 5



Division of Water Resources